

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: Galileo Merchants Central )  
Dist. 20, Map 55, Control Map 55, Parcel 35.02, ) Franklin County  
S.I. 000 & 001 )  
Commercial Property )  
Tax Year 2007 )

### INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued at \$12,450,300 as follows:

**S.I. 000**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,093,200	\$6,961,200	\$8,054,400	\$3,221,760

**S.I. 001**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$946,800	\$3,449,100	\$4,395,900	\$1,758,360

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on November 8, 2007 in Winchester, Tennessee. The taxpayer was represented by registered agent Jack Phelps. The assessor of property, Phillip Hayes, represented himself.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 34 acre tract improved with a 208,123 square foot shopping center located at 2675 Decherd Blvd. in Decherd, Tennessee. Special interest 000 contains a Wal-Mart Super Center situated on 18.22 acres. Special interest 001 is comprised of 15.78 acres containing 61,722 square feet of additional retail space. As of January 1, 2007, subject center was 96.8% occupied.

The taxpayer contended that subject property should be valued at \$7,900,000. In support of this position, the cost and income approaches were introduced into evidence. Mr. Phelps maintained that the cost and income approaches support value indications of \$9,909,000 and \$7,529,000 respectively. Mr. Phelps correlated the indications of value at \$7,900,000.

The assessor contended that subject property should remain valued at \$12,450,300. In support of this position, the testimony and written analysis of Billy Taylor, an appraiser with the Division of Property Assessments, was offered into evidence. Like Mr. Phelps, Mr. Taylor also introduced cost and income approaches into evidence. Unlike Mr. Phelps, however, Mr. Taylor asserted that the cost and income approaches support value indications of \$12,450,300 and \$11,958,517 respectively. Mr. Taylor argued that the current appraisal



of \$12,450,300 should remain in effect given the mutually supportive indications of value. Mr. Taylor also noted that subject property was utilized as collateral for an August 16, 2005 deed of trust reflecting on indebtedness of \$12,265,313.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$11,958,500 in accordance with Mr. Taylor's income approach.

The administrative judge finds that the procedure typically utilized in the income approach has been summarized in one authoritative text as follows:

Although there are various income capitalization techniques available to the appraiser, certain steps are essential in applying the income capitalization approach. Before applying any capitalization techniques, an appraiser must work down from potential gross income to net operating income. To do this, the appraiser will:

1. Research the income and expense data for the subject property and comparables.



2. Estimate the potential gross income of the property by adding the rental income and any other potential income.
3. Estimate the vacancy and collection loss.
4. Subtract vacancy and collection loss from total potential gross income to arrive at the effective gross income of the subject property.
5. Estimate the total operating expenses for the subject by adding fixed expenses, variable expenses, and a replacement allowance (where applicable).
6. Subtract the estimate of total operating expenses from the estimate of effective gross income to arrive at a net operating income.
7. Apply one of the direct or yield capitalization techniques to this data to generate an estimate of value via the income capitalization approach.

Appraisal Institute, *The Appraisal of Real Estate* at 493-94 (12<sup>th</sup> ed. 2001).

The administrative judge finds that Mr. Taylor's income approach comported with generally accepted appraisal practices and has significant probative value. The administrative judge finds that Mr. Taylor assumed a potential gross income of \$1,243,498 and a 5% vacancy and credit loss allowance in arriving at his effective gross income estimate of \$1,181,323.

In contrast, the administrative judge finds that Mr. Phelps offered no evidence with respect to potential gross income or a market vacancy and credit loss allowance. Instead, Mr. Phelps began his income approach by simply utilizing what the taxpayer's 2006 operating statement shows as the functional equivalent of effective gross income (\$1,002,622). The administrative judge finds such an approach is for all practical purposes a leased fee valuation whereas property is normally appraised in fee simple for Tennessee ad valorem tax purposes.<sup>1</sup> See *First American National Bank Building Partnership* (Assessment Appeals Commission, Davidson Co., Tax Years 1984-1987). Moreover, the administrative judge finds that the taxpayer's operating statement improperly excludes \$197,619 from income because of below market rents.

The administrative judge finds that Mr. Taylor's income approach also has greater probative value because he analyzed the taxpayer's operating statement in greater detail. For example, Mr. Taylor properly treated expenditures on a canopy as a capital expenditure rather than as an operating expense. Similarly, Mr. Taylor treated expenditures for striping the parking lot as a reserve item rather than as an operating expense.

Based upon the foregoing, the administrative judge finds that Mr. Taylor's income approach has greatest probative value and should be adopted as the basis of valuation. As previously noted, the administrative judge finds that the cost approach has significantly less

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<sup>1</sup> Tennessee Code Annotated, Section 67-5-502(d) provides for leasehold assessments when an exempt owner leases real property to a non-exempt entity for less than market rent.



probative value in this particular case due to subject property's age and income-producing nature.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

S.I. 000

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,093,200	\$6,643,000	\$7,736,200	\$3,094,480

S.I. 001

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$946,800	\$3,275,500	\$4,222,300	\$1,688,920

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

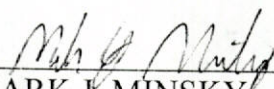
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.



ENTERED this 16th day of November, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jack C. Phelps  
Phillip Hayes, Assessor of Property